

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES EARL HILL,

Petitioner,

v.

CALVIN JOHNSON, *et al.*,

Respondents.

Case No. 2:98-cv-00914-KJD-DJA

ORDER

CALVIN JOHNSON, *et al.*,

Respondents.

In this habeas corpus action, the petitioner, James Earl Hill, is represented by appointed counsel, the Federal Public Defender for the District of Nevada (FPD). The case was initiated, *pro se*, on June 16, 1998. See Petition for Writ of Habeas Corpus (ECF No. 3). After the FPD was appointed to represent Hill, and after discovery proceedings, Hill filed an amended habeas petition on November 1, 1999 (ECF No. 55). Respondents filed a motion to dismiss (ECF No. 64) on February 10, 2000, asserting (among other grounds for dismissal) that certain of the claims in Hill's amended petition were unexhausted in state court. On August 27, 2001, the Court granted the motion to dismiss in part and dismissed this action without prejudice and without entry of a judgment, and administratively closed the case subject to reopening, to allow Hill to exhaust claims in state court. See Order entered August 27, 2001 (ECF No. 79) (copy of order filed by Hill as Exhibit 198 (ECF No. 127-1)).

On November 5, 2021, Hill filed a motion to reopen this case (ECF No. 126), stating that the state-court proceedings are now concluded. On November 9, 2021, the respondents filed a response to that motion (ECF No. 128) stating that they do not oppose the motion. The Court will grant Hill's motion, will order this action reopened, and will set a schedule for further proceedings.

1 **IT IS THEREFORE ORDERED** that Petitioner's Motion to Administratively
2 Reopen Habeas Proceedings (ECF No. 126) is **GRANTED**. The Clerk of the Court is
3 directed to update the docket for this case to reflect that it is administratively reopened.

4 **IT IS FURTHER ORDERED** that, pursuant to Federal Rule of Civil Procedure
5 25(d), the Clerk of the Court shall, on the docket for this case, substitute Calvin Johnson
6 for E.K. McDaniel, as the respondent warden, and Aaron Ford for Frankie Sue Del
7 Papa, as the respondent Nevada Attorney General.

8 **IT IS FURTHER ORDERED** that the following schedule will govern the further
9 proceedings in this action:

10 1. Second Amended Petition. Petitioner will have 60 days from the date of
11 this order to file a second amended petition for writ of habeas corpus. The second
12 amended petition must specifically state whether each ground for relief has been
13 exhausted in state court; for each claim that has been exhausted in state court, the
14 second amended petition must state how, when, and where that occurred.

15 2. Response to Petition. Respondents will have 90 days following the filing
16 of the second amended petition to file an answer or other response to the second
17 amended petition.

18 3. Reply and Response to Reply. Petitioner will have 60 days following the
19 filing of an answer to file a reply. Respondents will thereafter have 30 days following the
20 filing of a reply to file a response to the reply.

21 4. Briefing of Motion to Dismiss. If Respondents file a motion to dismiss,
22 Petitioner will have 60 days following the filing of the motion to file a response to the
23 motion. Respondents will thereafter have 30 days following the filing of the response to
24 file a reply.

25 5. Discovery. If Petitioner wishes to move for leave to conduct discovery,
26 Petitioner must file such motion concurrently with, but separate from, the response to
27 Respondents' motion to dismiss or the reply to Respondents' answer. Any motion for
28 leave to conduct discovery filed by Petitioner before that time may be considered

1 premature, and may be denied, without prejudice, on that basis. Respondents must file
2 a response to any such motion concurrently with, but separate from, their reply in
3 support of their motion to dismiss or their response to Petitioner's reply. Thereafter,
4 Petitioner will have 20 days to file a reply in support of the motion for leave to conduct
5 discovery.

6 6. Evidentiary Hearing. If Petitioner wishes to request an evidentiary
7 hearing, Petitioner must file a motion for an evidentiary hearing concurrently with, but
8 separate from, the response to Respondents' motion to dismiss or the reply to
9 Respondents' answer. Any motion for an evidentiary hearing filed by Petitioner before
10 that time may be considered premature, and may be denied, without prejudice, on that
11 basis. The motion for an evidentiary hearing must explain why an evidentiary hearing is
12 warranted and must meet the requirements of 28 U.S.C. § 2254(e). The motion must
13 state whether an evidentiary hearing was held in state court, and, if so, where the
14 transcript is located in the record. If Petitioner files a motion for an evidentiary hearing,
15 Respondents must file a response to that motion concurrently with, but separate from,
16 their reply in support of their motion to dismiss or their response to Petitioner's reply.
17 Thereafter, Petitioner will have 20 days to file a reply in support of the motion for an
18 evidentiary hearing.

DATED THIS 10 day of November , 2021.

**KENT J. DAWSON,
UNITED STATES DISTRICT JUDGE**